



States v. Jalili, 925 F.2d 889, 893 (6<sup>th</sup> Cir. 1991)); Wright v. United States Bd. of Parole, 557 F.2d 74, 77 (6<sup>th</sup> Cir.1977). Thus, a district court shall direct a writ of habeas corpus “to the person having custody of the person detained.” 28 U.S.C. § 2243; see Braden v. 30th Judicial Circuit Ct. of Ky., 410 U.S. 484, 494-95 (1973) (“The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody”). A district court only has jurisdiction over a habeas corpus petition if it has personal jurisdiction over the petitioner's custodian. Braden, 410 U.S. at 495. To evaluate jurisdiction, the petitioner's custodian must first be identified and then whether the court has personal jurisdiction over that custodian.

The Sixth Circuit has joined several other courts of appeals in holding that a prisoner's proper custodian for purposes of habeas review is the warden of the facility where he is being held. See Roman v. Ashcroft, 340 F.3d 314, 319 (6<sup>th</sup> Cir. 2004)(as a general rule, a petitioner should name as a respondent to his habeas corpus petition the individual having day-to-day control over the facility in which petitioner is being detained); Vasquez v. Reno, 233 F.3d 688, 693 (1<sup>st</sup> Cir. 2000) (alien seeking writ of habeas corpus contesting legality of his detention by Immigration and Naturalization Service (I.N.S.) was required to name as respondent individual having day-to-day control over facility in which he was being detained, not Attorney General, absent extraordinary circumstances); see e.g., United States v. Moussaoui, 365 F.3d 292, 300 (4<sup>th</sup> Cir. 2004)(the relevant question is not whether the district court can serve the witnesses, but rather whether the court can serve the custodian); Brittingham v. United States, 982 F.2d 378, 379 (9<sup>th</sup> Cir.1992); Blango v. Thornburgh, 942 F.2d 1487, 1491-92 (10<sup>th</sup> Cir.1991) (per curiam); Brennan v. Cunningham, 813 F.2d 1, 12 (1<sup>st</sup> Cir.1987); Monk v. Secretary of Navy, 793 F.2d 364, 368-69 (D.C.Cir.1986); Billiteri v. United States Bd. of Parole, 541 F.2d 938, 948 (2d Cir.1976); Jones v. Biddle, 131 F.2d 853, 854

(8<sup>th</sup> Cir.1942). In this context, the warden is the proper custodian because he has day-to-day control over the petitioner and is able to produce the latter before the habeas court. Blango, 942 F.2d at 1492 n. 10; Guerra, 786 F.2d at 416.

At the time Mr. Vallejo filed this pleading he was incarcerated at F.C.I. Milan. Therefore, his custodian, and the proper respondent in this action, is the warden at F.C.I. Milan. Inasmuch as that facility is not within this judicial district, the court lacks personal jurisdiction over Mr. Vallejo's custodian. Even if he were transferred, the court which had jurisdiction over his custodian at the time the petition was filed would retain jurisdiction for habeas purposes. See Cohen v. United States, 593 F.2d 766, 767 n. 2 (6<sup>th</sup> Cir.1979)(prisoner's transfer does not affect court's subject matter jurisdiction over the case).

Based on the foregoing, this court lacks jurisdiction over this petitioner. See 28 U.S.C. § 2241. Accordingly, this case is hereby TRANSFERRED to the United States District Court for the Eastern District of Michigan for all further proceedings. 28 U.S.C. § 1406(a). The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

4/3/06  
Date

Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
United States District Judge